

POST CONVICTION REMEDIES AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Judicial Code to clarify a statutory limitation on claims for relief under the Post-Conviction Remedies Act.

Highlighted Provisions:

This bill:

- ▶ amends a section of the Post-Conviction Remedies Act which lists grounds upon which relief may not be claimed and also lists an exception if there was a failure to timely raise the ground for relief due to ineffective counsel, by including in this section an amendment that directly states that the exemption relating to ineffective counsel is the only ground for relief under that section; and
- ▶ makes this amendment with the purpose that it function in conjunction with a rule recently adopted by the Utah Supreme Court.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-9-106, as last amended by Laws of Utah 2008, Chapter 288 and renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-9-106** is amended to read:

78B-9-106. Preclusion of relief -- Exception.

(1) A person is not eligible for relief under this chapter upon any ground that:

- (a) may still be raised on direct appeal or by a post-trial motion;
- (b) was raised or addressed at trial or on appeal;

33 (c) could have been but was not raised at trial or on appeal;

34 (d) was raised or addressed in any previous request for post-conviction relief or could
35 have been, but was not, raised in a previous request for post-conviction relief; or

36 (e) is barred by the limitation period established in Section 78B-9-107.

37 (2) (a) The state may raise any of the procedural bars or time bar at any time, including
38 during the state's appeal from an order granting post-conviction relief, unless the court
39 determines that the state should have raised the time bar or procedural bar at an earlier time.

40 (b) Any court may raise a procedural bar or time bar on its own motion, provided that it
41 gives the parties notice and an opportunity to be heard.

42 (3) Notwithstanding Subsection (1)(c), a person may be eligible for relief on a basis
43 that the ground could have been but was not raised at trial or on appeal, if the failure to raise
44 that ground was due to ineffective assistance of counsel.

45 (4) This section authorizes a merits review only to the extent required to address the
46 exception set forth in Subsection (3).

Legislative Review Note

as of 9-25-09 11:17 AM

Office of Legislative Research and General Counsel